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No. 93-908

Supreme Court, U.S.
FILED
APR 26 1994
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In The
Supreme Court of the United States
October Term, 1993

CHARLES J. REICH,

Petitioner,

v.

MARCUS E. COLLINS and THE GEORGIA
DEPARTMENT OF REVENUE,

Respondents.

On Writ Of Certiorari
To The Supreme Court Of Georgia

**RESPONDENTS' OBJECTION TO MOTION
BY JAMES B. BEAM DISTILLING CO.
FOR LEAVE TO FILE AMICUS BRIEF
IN SUPPORT OF PETITIONER**

WARREN R. CALVERT
Senior Assistant Attorney General
(Counsel of Record for Respondents)

MICHAEL J. BOWERS
Attorney General

DANIEL M. FORMBY
Senior Assistant Attorney General

Attorneys for Respondents

Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(404) 656-3370

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Respondents in the above-styled action respectfully object to the motion by James B. Beam Distilling Co. ("Beam") for leave to file an amicus brief in support of Petitioner. Respondents readily gave their consent to all other amici wishing to file in support of Petitioner. See *Brief of Committee On State Taxation As Amicus Curiae In*

Support Of Petitioner; Brief Of Tax Executives Institute, Inc. As Amicus Curiae In Support Of Petitioner; Brief Amici Curiae Of The National Association Of Retired Federal Employees, et al. In Support Of Petitioner. Such consent was not given to Beam because of the Respondents' well-founded concerns that Beam would not confine its brief to matters relevant to this case, but would instead try to argue the merits of Beam's own case, now pending on petition for certiorari. See *James B. Beam Distilling Co. v. State of Georgia*, United States Supreme Court, No. 93-1140 ("Beam"). The amicus brief submitted with Beam's motion bears out these concerns.

Beam's proposed amicus brief is a thinly disguised brief on the merits in Beam's own case. For example, Beam's brief asserts that "McKesson[] firm[ly] reject[ed] . . . the pass-on/standing defense". Beam's Amicus Brief, p. 5. Beam also claims that the standing defense upheld by the Georgia Supreme Court in Beam's case is not an independent and adequate state law basis upon which to deny Beam relief, *id.* at 3 n.2, and discusses Georgia's alcohol system at length, *see, e.g., id.* at 8-10, 22-25, all of which are matters completely irrelevant to the instant case. Beam even goes so far as to advance a theory which the Petitioner in this case has not advanced, to wit, that Respondents are "estop[ped] . . . from now denying . . . refunds[, which] pretermits the issue of the alleged adequacy of predeprivation remedies." *Id.* at 18.

Moreover, the grant of certiorari in this case was limited. The Court declined to consider Petitioner's

argument that the Georgia Supreme Court, by virtue of its construction of Georgia's refund statute, deprived the Petitioner of an alleged statutory right to a refund, in violation of Due Process. The Petitioner's argument in this respect was principally based on *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930) ("*Brinkerhoff*"). Although the *Brinkerhoff* issue is not involved in the instant case, a good portion of Beam's proposed amicus brief concerns the issue. *See, e.g., Beam's Amicus Brief*, pp. 17-19, n.21, *etc.*

Beam makes its intentions clear when it states that "[t]his Court should reverse the lower court . . . in . . . *Beam* and grant . . . a refund of the unconstitutionally collected taxes". *Id.* at 1. Beam's arguments can be addressed if the Court accepts Beam's case for review. Until then, the Respondents should not be forced to divert time and attention away from the important issues in this case to deal with the separate, distinct, and unrelated matters which Beam wants to litigate. "An *amicus curiae* brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court." U.S. Sup. Ct. Rule 37.1. However, "[a]n *amicus* brief which does not serve this purpose simply burdens the staff and facilities of the Court and its filing is not favored." *Id.*

For all of the foregoing reasons, Respondents respectfully submit that Beam's motion should be denied.

Respectfully submitted,

WARREN R. CALVERT
Senior Assistant Attorney General
(Counsel of Record for Respondents)

MICHAEL J. BOWERS
Attorney General

DANIEL M. FORMBY
Senior Assistant Attorney General

Attorneys for Respondents

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Atlanta, Georgia 30334-1300
(404) 656-3370